

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:	October 17, 2005	)	
		)	
CONSIDERATION OF A SETTLEMENT AGREEMENT BY		)	DOCKET NO.
THE CONSUMER SERVICES DIVISION WITH NATIONAL		)	05-00175
FOREX, CORP. CONCERNING VIOLATIONS OF THE		)	
TENNESSEE DO-NOT-CALL LAW, TENN. CODE ANN 65-4-		)	
401 ET SEQ.		)	

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ORDER APPROVING SETTLEMENT AGREEMENT

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This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on August 22, 2005 for consideration of a proposed *Settlement Agreement* between the Consumer Services and External Affairs Division of the TRA (the "CSD") and National Forex, Corp ("National Forex" or the "Company") related to alleged violations of the Tennessee Do-Not-Call Telephone Solicitation statute, Tenn. Code Ann. § 65-4-401 *et seq.* The proposed *Settlement Agreement* is attached hereto as Exhibit A.

Tenn Code Ann § 65-4-404 (2004) and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) (2004) requires persons or entities desiring to make telephone solicitations to residential subscribers to register in the Do-Not-Call program Tenn Code Ann. § 65-5-405(f) (2004) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes "Such proceedings include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up

to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction”<sup>1</sup>

The CSD’s investigation in this docket centered on three (3) complaints alleging six (6) separate violations. The complaints were received by the Authority between March 8, 2005 and June 6, 2005. The complaints alleged that the complainants, individuals properly listed on the Do-Not-Call register, received telephone solicitations from National Forex. Upon receiving these complaints, the CSD provided National Forex with notice of the allegations.

The proposed *Settlement Agreement* was negotiated as a result of the CSD’s investigation into the complaints against National Forex. In negotiating the terms and conditions of this *Settlement Agreement*, the CSD took into consideration the factors set forth in Tenn. Code Ann. § 65-4-116(b) (2004) as reflected in the proposed *Settlement Agreement*.

Tenn. Code Ann. § 65-4-116(b) (2004) provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

### **Settlement Agreement**

The proposed *Settlement Agreement* between National Forex and the CSD was filed with the Authority on August 11, 2005. Pursuant to the *Settlement Agreement*, National Forex agreed to make two payments totaling \$8,400 to the Authority along with assurances that it will fully comply with applicable state law. The terms of the *Settlement Agreement* require the Company to pay the first installment of \$4,200 to the Authority no later than thirty (30) days following the Authority’s approval of the *Settlement Agreement* with the remaining \$4,200 to be paid no later than ninety (90) days following approval of the *Settlement Agreement*.

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<sup>1</sup> Tenn. Code Ann. § 65-4-405(f) (2004)

**August 22, 2005 Authority Conference**

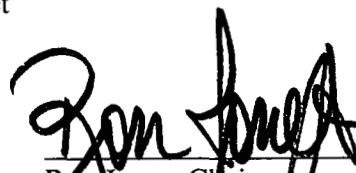
Counsel for National Forex, Mr. Don R. Boswell, participated during the August 22, 2005 Authority Conference by telephone. Following a discussion with the parties and a review of the *Settlement Agreement*, the panel voted unanimously to accept and approve the *Settlement Agreement*.

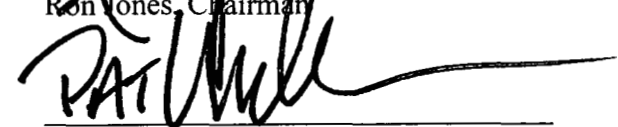
**IT IS THEREFORE ORDERED THAT:**

1 The *Settlement Agreement*, attached hereto as Exhibit A, is accepted and approved and is incorporated into this order as if fully rewritten herein.

2 National Forex shall make a total payment of \$8,400 in settlement of this matter and remit \$4,200 of that amount to the Office of the Chairman of the TRA in two installments of \$4,200 each. The first payment shall be made no later than thirty (30) days following the approval of this *Settlement Agreement* by the TRA Directors. National Forex shall remit the remaining \$4,200 to the Office of the Chairman of the TRA no later than ninety (90) days following approval of this *Settlement Agreement* by the TRA Directors.

5. Upon compliance with the terms of the *Settlement Agreement* attached hereto, National Forex is excused from further proceedings in this matter. In the event of any failure on the part of National Forex to comply with the terms and conditions of the *Settlement Agreement*, the Authority reserves the right to re-open this docket

  
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Ron Jones, Chairman

  
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Pat Miller, Director

  
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Sara Kyle, Director

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

IN RE:	)		
	)		
ALLEGED VIOLATIONS OF TENN.	)	DOCKET NO.	05-00175
CODE ANN. §65-4-401 <i>et seq</i> , DO-NOT-	)		
CALL SALES SOLICITATION LAW,	)	DO-NOT-CALL	T05-00082
AND RULES OF TENNESSEE	)	PROGRAM	T05-00155
REGULATORY AUTHORITY, CHAPTER	)	FILE NUMBERS	T05-00164
1220-4-11, BY:	)		
	)		
NATIONAL FOREX, CORP	)		
	)		
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**SETTLEMENT AGREEMENT**

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This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and National Forex, Corp. ("the Company"). This Settlement Agreement, which pertains to three complaints filed by the same complainant alleging that the Company violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, TENN. CODE ANN. §65-4-401, *et seq* , and TENN. COMP. R. & REGS. 1220-4-11.07 and the failure of the Company to register in the Do-Not-Call Program pursuant to TENN. CODE ANN. §65-4-405(d), and its concomitant regulations TENN. COMP. R. & REGS. 1220-4-11.04. This Settlement Agreement is subject to the approval of the Directors of the TRA.

The CSD's investigation in this docket commenced after it received a complaint (T05-00082) on March 8, 2005, alleging that the complainant, a person properly listed on the Do-Not-Call register, received an unlawful telephone solicitation call from the

Company on February 15, 2005 and then received two additional unlawful telephone solicitation calls from the Company on March 3, 2005. The CSD provided the Company with notice of these violations on March 8, 2005.

The CSD's investigation in this docket continued after it received a second complaint (T05-00164) on May 19, 2005, alleging that the complainant, a person properly listed on the Do-Not-Call register, received two unlawful telephone solicitation calls from the Company on the same day of April 27, 2005. Pursuant to the CSD's investigation, a subpoena was issued to the complainant's local carrier for the inbound call records. The records provided from the subpoena substantiated the complainant's claims of receiving the calls. The CSD provided the Company with notice of these violations on May 27, 2005.

The CSD received its third complaint (T05-00164) on June 6, 2005, alleging that the complainant, a person properly listed on the Do-Not-Call register, received an unlawful telephone solicitation from The Company on the morning of June 6, 2005. Pursuant to the CSD's continuing investigation, a subpoena was issued to the alleged caller's local carrier for the outbound toll call records terminating at the complainant's telephone number. The records provided from the subpoena substantiated the complainant's claim of receiving the call. The CSD provided the Company with notice of this violation on June 22, 2005.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by the Company

in this proceeding is fourteen thousand dollars (\$14,000), arising from these six (6) unlawful telephone solicitation call violations (\$12,000) and the failure to register in the Do-Not Call Program (\$2,000).

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. The Company has approximately fifteen (15) employees with its corporate headquarters located in Atlanta, Georgia.

After receiving notice of the violations, the Company contacted the CSD and expressed an interest in resolving the matter. Company officials notified the CSD that its internal investigation of the violations has resulted in the termination of two (2) employees. The CSD has received no additional complaints against the Company from Tennessee consumers since June 6, 2005.

In an effort to resolve these complaints, represented by the file numbers above, CSD and the Company agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. The Company does not dispute that the complaints against it are true and valid and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1), and TENN. CODE ANN. §65-4-405(d) and TENN. COMP. R. & REGS. 1220-4-11.04.
2. The Company through its legal counsel has notified the CSD that it has ceased soliciting in Tennessee and will register with the TRA as a telephone solicitor in the Do-Not Call Program, before any further telephone solicitations are made into Tennessee.

3. The Company agrees to pay eight thousand four hundred dollars (\$8,400.00) in settlement of the complaint, and agrees to remit four thousand two hundred dollars (\$4,200 00) to the TRA no later than thirty (30) days from the date of approval of the Settlement Agreement by the Directors. The Company shall pay the remaining four thousand two hundred dollars (\$4,200.00) to the TRA no later than ninety (90) days after the date the Directors of the TRA approve this Settlement Agreement.<sup>1</sup>
4. The Company agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations. Upon payment of the amount of eight thousand four hundred dollars (\$8,400.00) and full compliance with the other terms and conditions of this Settlement Agreement, the Company is excused from further proceedings in this matter.
5. If any clause, provision or section of this Settlement Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or Oprovision had not been contained herein.
6. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

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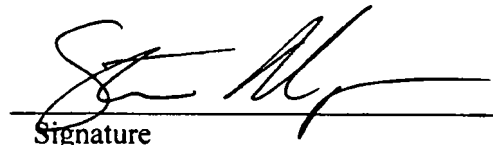
<sup>1</sup> The payments may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 05-00175

7. The Company agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
8. In the event that the Company fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. The Company shall pay any and all costs incurred in enforcing the Settlement Agreement.



Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

8-11-05  
Date



Signature

STEVEN WAGNER  
Print Name

COMPLIANCE OFFICER  
Print Title

8/10/05  
Date